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APPLE INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

ZACK WARD and THOMAS BUCAR, on
behalf of themselves and all others similarly
situated,

Plaintiffs,

v.

APPLE INC.,

Defendant.

IN RE APPLE IPHONE ANTITRUST
LITIGATION

CASE NO. C 12-05404-YGR
Related to Case No. C 11-06714-YGR

**STIPULATION AND ~~PROPOSED~~ ORDER
DISMISSING PLAINTIFFS' COMPLAINT
PURSUANT TO RULE 12(b)(7) OF THE
FEDERAL RULES OF CIVIL PROCEDURE**

1 WHEREAS, Plaintiffs filed the Complaint in this action, *Ward v. Apple Inc.* (“*Ward*”), on
2 October 19, 2012.

3 WHEREAS, on November 15, 2012, the Court ordered the instant *Ward* case related to
4 *In re Apple iPhone Antitrust Litigation*, Case No. 11-cv-6714-YGR (“*iPhone II*”).

5 WHEREAS, the only claim for relief in *Ward*, Count I (“Conspiracy to Monopolize the
6 iPhone Voice and Data Services Aftermarket in Violation of Section 2 of the Sherman Act”) is
7 substantially identical to Count III (“Conspiracy to Monopolize the iPhone Voice and Data
8 Services Aftermarket in Violation of Section 2 of the Sherman Act”) of the Consolidated
9 Complaint in *iPhone II*.

10 WHEREAS, pursuant to Rules 12(b)(7) and 12(b)(6) of the Federal Rules of Civil
11 Procedure, Apple Inc. (“Apple”) moved to dismiss Count III of the Consolidated Complaint in
12 *iPhone II* (ECF Nos. 36-40 and ECF No. 42, filed under seal pursuant to Order found at ECF No.
13 41), Plaintiffs opposed the motion (ECF Nos. 43-45), and Apple filed a reply brief in support of
14 its motion (ECF No. 56-57 and ECF 59, filed under seal pursuant to Order found at ECF 58).

15 WHEREAS, on July 11, 2012, Chief Judge Ware granted Apple’s Rule 12(b)(7) motion
16 to dismiss for failure to join a necessary party and denied, without prejudice, Apple’s Rule
17 12(b)(6) motion to dismiss for failure to state a claim (ECF No. 75).

18 WHEREAS, the Court’s July 11, 2012 Order said: “The Court finds that ATTM [AT&T
19 Mobility LLC] is a necessary party and therefore must be joined as a party under Fed. R. Civ. P.
20 12(b)(7).”

21 WHEREAS, notwithstanding the Court’s July 11, 2012 Order, Plaintiffs in *Ward* have
22 not named AT&T Mobility LLC as a defendant despite alleging the identical claim.

23 WHEREAS, Apple intends to move, as it did in *iPhone II* on the identical claim, to
24 dismiss the *Ward* Complaint for failure to join a necessary party, namely AT&T Mobility LLC,
25 and for failure to state a claim.

26 WHEREAS, Plaintiffs asserted in their portion of the Amended Joint Case Management
27 Conference Statement in *Ward* (ECF No. 15): “Should the Court decide to issue the same ruling
28 in this case regarding Count I as that issued by Judge Ware in the related case concerning Count

III (*see In re Apple iPhone Antitrust Litigation*, No. C 11-6714 YGR, ECF No. 75), dismiss the claim and permit Plaintiffs to add ATTM as a party, Plaintiffs will stand on their existing complaint and not add ATTM as a party. Therefore any such dismissal will become final and immediately appealable to the Ninth Circuit Court of Appeals.”

WHEREAS, during the Case Management Conference on December 10, 2012, counsel for the parties discussed the *Ward* case and the Court indicated that if the parties agreed on a stipulation dismissing the *Ward* case for failure to join a necessary party, AT&T Mobility LLC, the Court would be inclined to enter a stipulated order dismissing the complaint and would thereafter enter judgment in favor of Apple.

WHEREAS, consistent with Rule 1 of the Federal Rules of Civil Procedure, Plaintiffs and Apple have conferred and agreed as follows:

1. The only claim for relief in *Ward* (Count I) is substantially identical to Count III of the Consolidated Complaint in *iPhone II*.

2. Apple’s notice of motion and motion to dismiss in *iPhone II* (ECF Nos. 37 and 42, filed under seal pursuant to Order found at ECF No. 41), shall serve as Apple’s notice of motion and motion to dismiss the *Ward* complaint. Those papers and the supporting documents submitted by Apple in *iPhone II* (ECF Nos. 36-40 and ECF No. 42, filed under seal pursuant to Order found at ECF No. 41) shall be deemed to refer to the *Ward* complaint and are properly before the Court in connection with Apple’s motion to dismiss the *Ward* complaint.

3. Plaintiffs’ opposition to Apple’s motion to dismiss in *iPhone II* (ECF No. 44) shall serve as Plaintiffs’ opposition to Apple’s motion to dismiss in *Ward*. Those papers and the supporting documents submitted by Plaintiffs in *iPhone II* (ECF Nos. 43-45) shall be deemed to refer to the *Ward* complaint and are properly before the Court in connection with Apple’s motion to dismiss the *Ward* complaint.

4. Apple’s reply in support of its motion to dismiss in *iPhone II* (ECF Nos. 56, 57 and 59, filed under seal pursuant to Order found at ECF No. 58) shall serve as Apple’s reply in support of its motion to dismiss in *Ward* and shall be deemed to refer to the *Ward* complaint and are properly before the Court in connection with Apple’s motion to dismiss the *Ward* complaint.

1 5. In order to permit Apple to perfect its record for any appeal, Apple submits the
2 declaration attached as Exhibit 1 attesting to AT&T Mobility LLC's interest in this case.

3 6. The parties stipulate that the Court may enter the following order dismissing the
4 case with prejudice for failure to join a necessary party and thereafter enter judgment in favor of
5 Apple: "For the reasons set forth in Judge Ware's July 11, 2012 Order, the Court grants Apple's
6 motion to dismiss Plaintiffs' Complaint pursuant to Rule 12(b)(7) of the Federal Rules of Civil
7 Procedure for failure to join a necessary party, AT&T Mobility LLC. Given Plaintiffs'
8 representation that they will stand on their Complaint and not name AT&T Mobility LLC as a
9 defendant, the Court dismisses Plaintiffs' Complaint with prejudice and directs the Clerk to enter
10 judgment in favor of Apple forthwith. In order to ensure a complete record for any appeal, the
11 Clerk is directed to make the following documents from *In re Apple iPhone Antitrust Litigation*,
12 No. C 11-6714 YGR, part of the record in this case: ECF Nos. 36-45, 56-59 and 75."

13 **IT IS SO STIPULATED AND AGREED.**

14 The authority for and concurrence in the filing of this stipulated request has been
15 obtained from each of the signatories, pursuant to Civil Local Rule 5-1(i)(3).

16
17 Dated: December 14, 2012

Respectfully submitted,

18 WOLF HALDENSTEIN ADLER FREEMAN
19 & HERZ LLP

20 By /s/ Rachele R. Rickert

21 Rachele R. Rickert
22 Attorneys for Plaintiffs

23 Dated: December 14, 2012

Respectfully submitted,

24 LATHAM & WATKINS LLP

25 By /s/ Christopher S. Yates

26 Christopher S. Yates
27 Attorneys for Defendant APPLE INC.

ORDER

PURSUANT TO THE PARTIES' STIPULATION, and for the reasons set forth in Judge Ware's July 11, 2012 Order, the Court grants Apple's motion to dismiss Plaintiffs' Complaint pursuant to Rule 12(b)(7) of the Federal Rules of Civil Procedure for failure to join a necessary party, AT&T Mobility LLC. Given Plaintiffs' representation that they will stand on their Complaint and not name AT&T Mobility LLC as a defendant, the Court **DISMISSES** Plaintiffs' Complaint **WITH PREJUDICE**. In order to ensure a complete record for any appeal, the Clerk is directed to make the following documents from *In re Apple iPhone Antitrust Litigation*, No. C 11-6714 YGR, part of the record in this case: ECF Nos. 36-45, 56-59 and 75.

The parties are directed to meet and confer and submit to the Court a proposed judgment consistent with this Order by December 20, 2012.

This Order terminates Dkt. No. 22.

IT IS SO ORDERED.

Dated: December 17, 2012


 THE HONORABLE YVONNE GONZALEZ ROGERS
 United States District Judge

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